

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

01 COMMUNIQUE LABORATORY, INC.)	
Plaintiff,)	
v.)	Case No. 10-cv-01007-CMH-TRJ
LOGMEIN, INC.)	JURY TRIAL DEMANDED
Defendant.)	

**PLAINTIFF’S RENEWED MOTION FOR
SUMMARY JUDGMENT OF NO INEQUITABLE CONDUCT
IN LIGHT OF FEDERAL CIRCUIT’S *THERASENSE* DECISION**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiff 01 Communique Laboratory, Inc. (“01”) renews its motion for entry of summary judgment on Defendant LogMeIn, Inc.’s (“LMI”) inequitable conduct defense in light of the *en banc* decision of the United States Court of Appeals for the Federal Circuit on May 25, 2011 in *Therasense, Inc. v. Becton, Dickinson and Co.*, 649 F.3d 1276 (Fed. Cir. 2011) (en banc) (“*Therasense*”), which substantially heightened the standards for alleging and proving that defense. This Court dismissed 01’s previous motion under pre-*Therasense* standards on May 4, 2011 as moot in light of its summary judgment ruling of non-infringement in favor of LMI. (ECF 137).

Summary judgment is appropriate because the previous ruling of non-infringement has been vacated and remanded, and therefore, the motion is no longer moot. There is no genuine issue of material fact, and LMI cannot prove the specific intent to mislead the United States Patent and Trademark Office (“PTO”) now required by *Therasense*. 01 is therefore entitled to judgment on these issues as a matter of law.

In support of this Motion, 01 submits the accompanying Memorandum.

Date: December 27, 2012

/s/ A. Neal Seth

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Plaintiff's Renewed Motion For Summary Judgment Of No Inequitable Conduct In Light Of Federal Circuit's *Therasense* Decision has been served by hand, on December 27, 2012, to the following counsel of record:

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